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The Child Issue

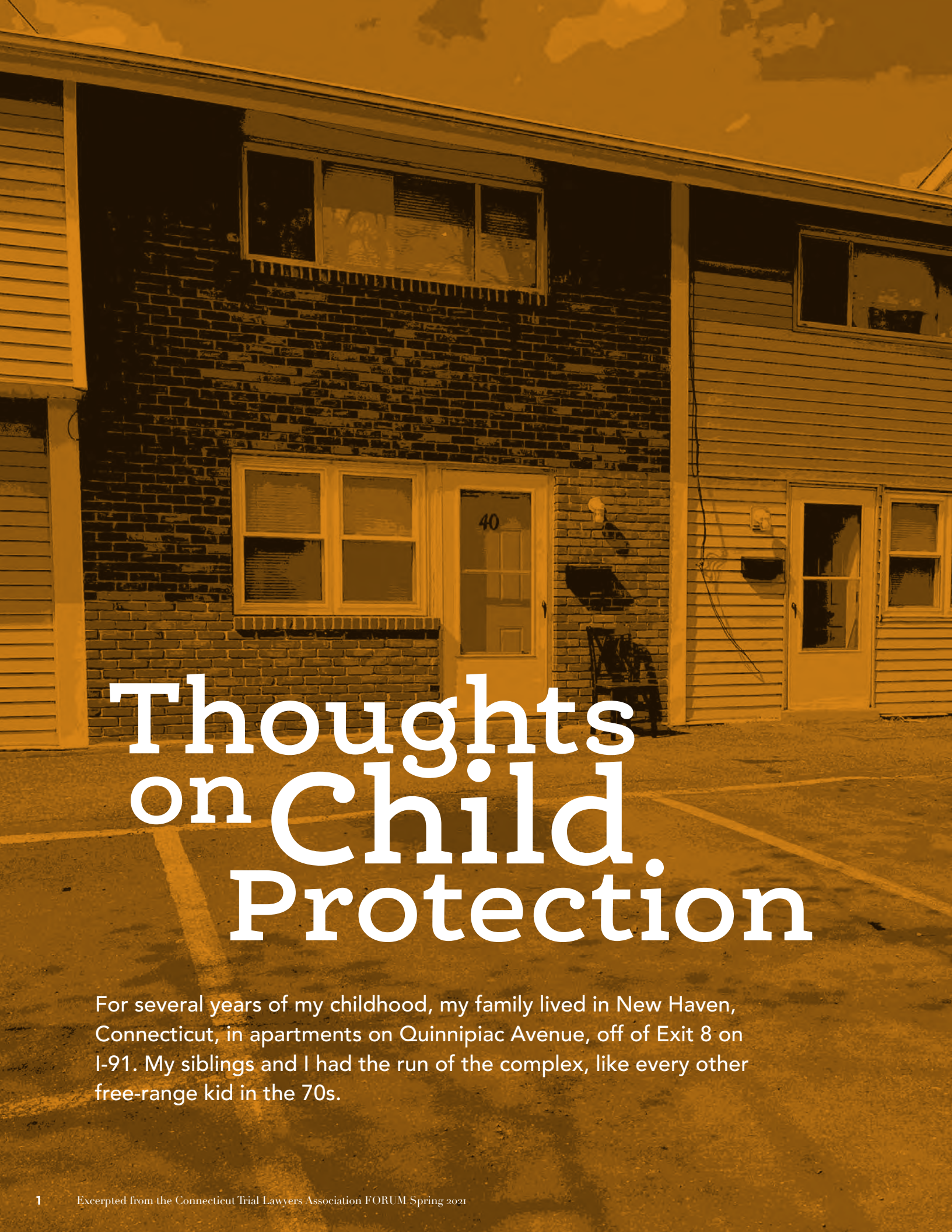
Where Youth and the Law Intersect

The Scourge of Sex Trafficking
Do Bullies Have First Amendment Rights?
Minors Committing Torts: Who Is Liable?
The Questions of Calling a Child Witness

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Thoughts on Child Protection

For several years of my childhood, my family lived in New Haven, Connecticut, in apartments on Quinnipiac Avenue, off of Exit 8 on I-91. My siblings and I had the run of the complex, like every other free-range kid in the 70s.

My twin sister, Jessica, and I would take a school bus down Quinnipiac Avenue to the Head Start program across from the Quinnipiac River in Fair Haven. While some may criticize poverty initiatives and funding for education, the Head Start program was crucial in leveling the playing field between poor kids and rich kids. We all needed to learn to read and write, irrespective of our parents' financial resources. My siblings and I certainly benefited. Our family moved on, we kids grew up, and fast-forward to now where I have my own legal practice that focuses on child protection law,¹ the area of the law where a state's mandate to protect children collides with a parent's right to raise their children free from governmental interference.² Unfortunately, children from poor families and communities are highly overrepresented in the child protection system,³ and I find it ironic that I now have had child clients who live in those same apartments where I grew up long ago. It is a strange feeling pulling into the apartment complex that is both familiar and changed.

Crucial Choices to Be Made

The power to completely sever the relationship between a parent and their child(ren), to tell a parent that they are not fit, or to decide that a child can no longer be reunited with their parent involves crucial choices by the judges who preside over these matters. They can be – and often are – heartbreaking decisions. In the midst of the pandemic and uncertainties in life, the child protection bar continued to discharge its duties. The pandemic did not stop the Connecticut Department of Children and Families (DCF) from continuing to remove children from their parents or caregivers, or from filing neglect,⁴ abuse,⁵ uncared for,⁶ and termination of parental rights petitions seeking to sever the legal relationship between a respondent parent and their child(ren).

However, DCF's work slowed in many respects as children were quarantined at home, away from the eyes and ears of teachers, doctors, family and friends, many of whom are mandated reporters and who often call in hotline referrals.



Facing Cumulative Challenges

Prior to the pandemic, in August 2019, I was assigned a respondent mother (I will call her “M”) on a neglect matter involving her three children, ages 3, 2, and two months. M had a prior DCF case three years ago involving domestic violence with her then-boyfriend, the father of the children. The new referral⁷ involved domestic violence, again, with the father of the children. He and M had married since the first case. Prior to Covid-19, DCF workers regularly met with children and their parents or caregivers (biological, foster, legal guardians) in their homes. In November 2019, the assigned social worker, Gabrielle Mitchell, called me to set up a home visit, as my client had requested that I attend.

When I arrived at the client's apartment building in Wallingford, I texted my client so she could open the door to the building where her unit was located. M was there with the baby in her arms and the toddlers running around the one-room apartment.⁸ She was in the process of being evicted from the apartment. Many of M's personal belongings were packed in cardboard boxes. She had contacted 211 for shelter placements, had interviewed at a pizza place and was waiting for a second interview at a department store. M had no food in the house. Gabrielle explained that she would need to call her supervisor as she could not leave M and the children with no food, and it could result in a 96-hour hold. This meant that DCF could potentially take temporary custody of the children.

Creative, Compassionate Problem-Solving Can Help

I was not prepared to watch Gabrielle pile the children into a state car and drive away, and I wondered if Gabrielle could even find a state car with three car seats for the children to be transported. I was not about to watch children being pried from my client's arms. I have observed children being removed from their mothers or fathers; you cannot unsee or unhear that type of thing.⁹ The lawyer and mother in me decided that removal of M's children was not an option. I told Gabrielle to stay with M and the children so that I could arrange for a supply of groceries. Gabrielle's ability to partner with M from that day forward was critical in providing appropriate services for M and the children.¹⁰

M and the children subsequently moved from the apartment to the home of the children's paternal grandparents. M engaged in therapy focusing on intimate partner violence¹¹ and its impact on her children. M's case with DCF closed in February 2021. M continues to be the sole provider and primary parent of the children, as their father is intermittently in and out of their lives. When the father does appear, he creates a multitude of problems, both emotional and legal.

Something as simple as supplying groceries for M and her children prevented their removal from the family. It ensured that three additional children were not added to the foster care system and that the children were not subjected to the adverse childhood experience¹² of removal from their mother. It also ensured that a mother was not going to lose her children to the state solely because of poverty.



Pandemic Puts Everyone at Risk

The new \$1.9 trillion economic rescue plan includes \$3 billion to help women, infants and children secure food and gives U.S. territories \$1 billion in nutrition assistance. The plan seeks to assist people with unemployment, food insecurity, homelessness, education and stimulus checks to help the economic recovery. As Dr. Pamela Cantor, founder of Turnaround for Children, a group created to work on research and policy aimed at spreading the word about the science of trauma and the science of resilience, notes:

Adversity has a biological impact on children's development through the mechanism of stress....Cortisol [the hormone released when we are under stress] is toxic to the developing brain and immune system. It impacts the development of the architecture of the brain so that children don't grow up to have the attentional or behavioral control to be able to engage as learners.¹³

Living through a pandemic may very well qualify as an adverse childhood experience. Prior to the pandemic, low income and poor families and their children already had a difficult time making ends meet. The pandemic intensified problems of food insecurity, housing, mental health, domestic violence, substance abuse and instability of these families. Parents with DCF cases are working to reunify with their children despite service provider shutdowns that have relegated many to FaceTime calls with their children who are in DCF care.

The inequitable distribution of the risk related to the pandemic also weighs on our collective psyche. While I do not have all the answers, I know that my colleagues and I are devoted to the effective representation of our clients navigating the child protection system. In the meantime, I recommend exercise and a healthy lifestyle to offset the deleterious effects of a pandemic that has us all in a stressful situation. I would also encourage you to do something for someone in your community who is struggling to stay afloat during this unprecedented period in our history. ●

- 1 I am on the Assigned Counsel panel in New Haven Juvenile Court through the Office of Chief Public Defender. I am regularly assigned children or respondent parents or Legal Guardians who qualify for counsel by the Court.
- 2 The parents' right to custody, companionship and care of their children is rooted in the Fourteenth Amendment of the United States Constitution. This interest is held by both parents and their children. *Nicholson v. Williams*, 203 F. Supp. 2d 153, 215 (E.D.N.Y. 2002) ("The interest in not being forcibly separated by the state is shared by parents and children.").
- 3 Bong Ju Lee and Robert M. George. 1999. *Poverty, early childbearing, and child maltreatment: A multinomial analysis*. Children and Youth Services Review, Vol. 21, pp. 755-780.; Duncan Lindsey. 1991. *Factors affecting the foster care placement decision: An analysis of national survey data*. American Journal of Orthopsychiatry, Vol. 61, pp. 272-281.
- 4 Connecticut General Statutes 46b-120 (4) provides the definition of "Neglect" – Any child or youth who has been abandoned or is being denied proper care and attention, physically, educationally, emotionally or morally or is being permitted to live under conditions, circumstances or associations injurious to his or her well-being or has been abused.
- 5 Connecticut General Statutes 46b-120 (5) provides the definition of "Abuse" – A child may be found "abused" who (A) has been inflicted with physical injury or injuries other than by accidental means, (B) has injuries that are at variance with the history given of them, or (C) is in a condition that is the result of maltreatment, including, but not limited to, malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment or cruel punishment.
- 6 Connecticut General Statutes 46b-120 (6) provides the definition of "Uncared for" – A child may be found "uncared for" (A) who is homeless, (B) whose home cannot provide the specialized care that the physical, emotional or mental condition of the child requires, or (C) who has been identified as a victim of trafficking, as defined in § 46a-170. For the purposes of this section, the treatment of any child by an accredited Christian Science

practitioner, in lieu of treatment by a licensed practitioner of the healing arts, shall not of itself constitute neglect or maltreatment.

- 7 During this incident, the father of the children assaulted M by punching her with a closed fist in her left eye and right side of her mouth and slashing her car tires.
- 8 It was literally one room for M and her children, which leads me to share with you that I will never complain about living in a 1,500-square-foot house.
- 9 When I get to the point in an Order of Temporary Custody trial where DCF has three witnesses testify that the parent "flipped out" when DCF removed their children, I always take the opportunity to remind people in the courtroom that "this is normal." I silently wonder how they would respond to the state removing their children from them. Most parents become apologetic and despondent. Police are called. It is almost always a traumatic and sad scene.
- 10 M's precarious housing situation, coupled with her lack of resources and history of intimate partner violence with the father of the children placed her and the children in a dangerous situation.
- 11 On February 23, 2021, The National Commission on Covid-19 and Criminal Justice released a study documenting that domestic violence incidents increased 8.1 percent after jurisdictions imposed pandemic-related lockdown orders. *NCCCCJ - Impact Report: COVID-19 and Domestic Violence Trends* (counciloncj.org)
- 12 Adverse Childhood Experiences (ACEs) are potentially traumatic events that occur in childhood. ACEs can include violence, abuse, and growing up in a family with mental health or substance use problems. Toxic stress from ACEs can change brain development and affect how the body responds to stress. ACEs are linked to chronic health problems, mental illness, and substance misuse in adulthood. [cdc.gov/vitalsigns/aces/](https://www.cdc.gov/vitalsigns/aces/)
- 13 *How to Apply the Brain Science of Resilience to the Classroom*, Anya Kamentz, NPRed, June 12, 2017.



IT IS EASIER TO BUILD STRONG
CHILDREN THAN TO REPAIR
BROKEN MEN.

– FREDERICK DOUGLASS